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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,756	10/06/2000	G. Grady McBride	5259-04900/EBM	8670

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EXAMINER
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DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 08/13/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/680,756

Applicant(s)

MCBRIDE ET AL.

Examiner

D Jacob Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 187-276 is/are pending in the application.
- 4a) Of the above claim(s) 209,234 and 257 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 187-208,210-233,235-256, 258-262 and 264-276 is/are rejected.
- 7) ☒ Claim(s) 263 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7,8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 277-282, directed to nonelected inventions, have been cancelled from further consideration in Paper No. 10. Claims 209, 234 and 257 are directed to a nonelected species and are withdrawn by the examiner. The vibrational indicator as disclosed in the specification refers to the embodiment of Fig. 7, not the elected embodiment of Fig. 6.

### ***Claim Objections***

Claim 265 is objected to because, "...the range of rotation of the portion of the first section relative *and* the portion of the second section..." is not idiomatic. Examiner assumes that "to" is meant to be used in place of "and". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 195, 221 and 244 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no reference point or "zeroing

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out” from which to measure the lower limit as being “greater than 0 degrees.” If the lower limit of angulation is greater than 0 degrees, then where is 0 degrees?

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 187-197, 199-208, 212-222, 224-233, 237-245, 247-256 and 260-262 and 264-276 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,283,967 to Troxell et al.

Troxell discloses a connector (Figs. 2-3) comprising a first section 22 having an opening and a cam system comprising engager 94 and the interior of hooks 90. The engager extends into the opening to secure elongated member 12. The connector further comprises a second section 18 coupled to the first section 16, and a fastener/set screw 44, which inhibits movement of the first section 16 relative to the second section 26 by locking the two sections together. The sections may rotate with respect to one another either along the longitudinal axis of the connector, or with respect to the longitudinal axis of the connector. The range of rotation may be limited to whatever

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extent the user chooses to limit the rotation of the connectors. Therefore, the range of rotation may be less than 90 degrees or even less than 20 degrees.

Rotating one section with respect to another section, and with respect to the longitudinal axis of the connector, results in an angulated configuration. The range of angulation may be whatever the user chooses, which certainly may be less than about 30 degrees. Furthermore, the lower limit may be 0 degrees. The lower limit may be greater than 0 degrees because there is not an initial point or "zeroing out" from which to measure a lower limit of greater than 0 degrees. Zero degrees is therefore an arbitrary reference point.

With respect to claims 197, 222 and 245 *only*, the fastener is element 70 and the lining is element 44.

While in the locked state, the first section and the second section are inhibited from being removed from one another.

Since the cam system is screwed into the first section, it is *inhibited* from being removed, though not prevented from being removed. The rotational range of the cam system is limited to whatever extent the user desires.

The second section 18 further comprises a cam system 98 that extends into an opening to secure a second elongated member 14. The fastener 44 inhibits or controls the distance between the first and second openings.

Regarding claims 262, 264 and 265, the device comprises a first section 16, a second section 18, a connecting member 24, a fastener 44, and a holder, which as illustrated in Fig. 2, comprises the female portion of the second section and receives the

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connecting member 24. The cam system comprises the interior of hooks 90 and an engager 94. The first and second portions may rotate relative to each other and along the longitudinal axis.

Regarding claims 266-269, the device instead comprises a first section 18, a second section 16, a connecting member 24, a fastener 70 and a holder 54. The holder 54 and the connecting member 24 may move relative to one another when the fastener 70 is not locked into position, but the holder and connecting member are stabilized when the fastener 70 is locked.

Regarding claims 270, 272 and 273, the device comprises a first section 18, a second section 16, a connecting member 24, a fastener 44, and a holder, which as illustrated in Fig. 2, comprises the female portion of the second section and receives the connecting member 24. The cam system comprises the interior of hooks 90 and an engager 94. The first and second portions may rotate relative to each other and along the longitudinal axis.

Regarding claims 266-269, the device instead comprises a first section 16, a second section 18, a connecting member 24, a fastener 70 and a holder 54. The holder 54 and the connecting member 24 may move relative to one another when the fastener 70 is not locked into position, but the holder and connecting member are stabilized when the fastener 70 is locked.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(c) which forms the basis for all obviousness rejections set forth in this Office action:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 198, 223 and 246 are rejected under 35 U.S.C. 103(c) as being unpatentable over U.S. Pat. No. 6,283,967 to Troxell et al. in view of U.S. Pat. No. 6,562,038 to Morrison. Troxell discloses cam systems having hooks 90, but is silent about roughening the cam systems or the hooks 90 to more effectively secure rods 12 and 14. Morrison teaches a rod that is clasped between a clevis (Col. 3, lines 29-33). The clevis is roughened to more effectively secure the rod. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a roughening surface to the cam systems, or the hooks 90, to more effectively secure rods 12 and 14.

Claims 210, 211, 235, 236, 258 and 259 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,283,967 to Troxell et al. in view of U.S. Pat. No. 6,331,179 to Freid et al. Troxell discloses a cam system, but is silent regarding a driver to apply the cam system. Nevertheless, Freid discloses in Fig. 22 a driver used to apply screws. A driver of similar shape (though perhaps having a different size) may be used to apply the cam system. As the driver is turned, there is a visual indicator 454.

***Allowable Subject Matter***

Claim 263 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



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**Conclusion**

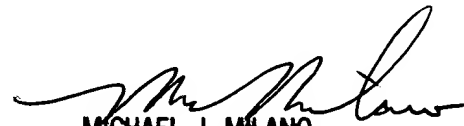
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Pat. No. 6,306,137 to Troxell and U.S. Pub. No. 2003/0114853 to Burgess et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D Jacob Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
DJD  
August 7, 2003

  
MICHAEL J. MILANO  
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